

Assembly Bill No. 620

CHAPTER 305

An act to amend Sections 1335, 1336, 1337, and 1341 of the Penal Code, relating to criminal proceedings.

[Approved by Governor September 22, 2005. Filed with
Secretary of State September 22, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 620, Negrete McLeod. Criminal proceedings: examination of witnesses.

Existing law provides for the conditional examination of a witness by the defendant in all cases and by the people in cases where the punishment may be other than death. Existing law further provides that when the defendant has been charged with a serious felony, as defined, the people may have a witness examined conditionally if the people have evidence the life of the witness is in jeopardy.

This bill would permit the people or the defendant, when the defendant is charged with a serious felony, to have a witness examined conditionally if there is evidence that the life of the witness is in jeopardy.

Existing law provides that the defendant or the people may apply for an order that the witness be examined conditionally when the material witness is about to leave the state, or is so sick as to afford reasonable grounds he or she will be unable to attend the trial, or is a person 70 years of age or older, or a dependent adult. Further, existing law provides the people may apply for the conditional examination of a prosecution witness when the people have evidence that the witness' life is in jeopardy.

This bill would lower the age at which a conditional examination application for a material witness may be made to 65 years of age or older. This bill would permit a conditional examination to be sought by either the people or the defendant when there is evidence a witness, not just a prosecution witness, is in jeopardy.

Existing law outlines specified information that must be provided upon an affidavit when applying for a conditional examination, including the nature of the offense, the state of the proceedings in the action, witness information, and the specified grounds that make the conditional examination necessary.

Existing law prohibits a conditional examination unless the reasons for the exam, as provided for in statute, are shown to the satisfaction of the magistrate.

This bill would make other conforming changes to reduce the witness age to 65, from 70, for purposes of granting a request for a conditional examination, and to conform the definition of "dependent adult."

The people of the State of California do enact as follows:

SECTION 1. Section 1335 of the Penal Code is amended to read:

1335. (a) When a defendant has been charged with a public offense triable in any court, he or she in all cases, and the people in cases other than those for which the punishment may be death, may, if the defendant has been fully informed of his or her right to counsel as provided by law, have witnesses examined conditionally in his or her or their behalf, as prescribed in this chapter.

(b) When a defendant has been charged with a serious felony, the people or the defendant may, if the defendant has been fully informed of his or her right to counsel as provided by law, have a witness examined conditionally as prescribed in this chapter, if there is evidence that the life of the witness is in jeopardy.

(c) As used in this section, “serious felony” means any of the felonies listed in subdivision (c) of Section 1192.7 or any violation of Section 11351, 11352, 11378, or 11379 of the Health and Safety Code.

SEC. 2. Section 1336 of the Penal Code is amended to read:

1336. (a) When a material witness for the defendant, or for the people, is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehension that he or she will be unable to attend the trial, or is a person 65 years of age or older, or a dependent adult, the defendant or the people may apply for an order that the witness be examined conditionally.

(b) When there is evidence that the life of a witness is in jeopardy, the defendant or the people may apply for an order that the witness be examined conditionally.

(c) As used in this section, “dependent adult” means any person who is between the ages of 18 and 65, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent adult” includes any person between the ages of 18 and 65, who is admitted as an inpatient to a 24-hour facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

SEC. 3. Section 1337 of the Penal Code is amended to read:

1337. The application shall be made upon affidavit stating all of the following:

- (1) The nature of the offense charged.
- (2) The state of the proceedings in the action.
- (3) The name and residence of the witness, and that his or her testimony is material to the defense or the prosecution of the action.
- (4) That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 65 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy.

SEC. 4. Section 1341 of the Penal Code is amended to read:

1341. If, at the time and place so designated, it is shown to the satisfaction of the magistrate that the witness is not about to leave the state, or is not sick or infirm, or is not a person 65 years of age or older, or a dependent adult, or that the life of the witness is not in jeopardy, or that the application was made to avoid the examination of the witness at the trial, the examination cannot take place.

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